

Memorandum

To: Governor's Energy Consumer Protection Task Force

From: PSC staff

Date: October 9, 2003

Re: NorthWestern ownership (rate base) of default supply resources

Item number 4 on the Task Force agenda is a discussion of NorthWestern Ownership (rate base) of default supply resources. This memo provides information that may be useful to the Task Force as it discusses this item.

The original electric restructuring legislation (SB 390, 1997) required a vertically integrated utility to functionally separate its electricity supply, retail transmission, retail distribution and regulated and unregulated retail energy service operations. This requirement still exists in § 69-8-204, MCA. Additionally, vertically integrated utilities were required to remove their generation assets from the rate base at the time the PSC approved the utility's transition plan. This requirement was contained in § 69-8-210, MCA until the 2003 legislature passed HB 509 and SB 247; the requirement to remove generation assets from rate base was removed with the enactment of both these bills.

Under the existing restructuring statutes, nothing explicitly prohibits the default supplier from owning and rate basing generation assets. Certain sections of the statutes seem to imply that the default supply portfolio will be composed of power supply purchase agreements, such as the planning and procurement provisions in § 69-8-419 and the advanced approval provisions in § 69-8-421. On the other hand, the general provisions of the Act require the utility to provide default service at the lowest long-term total cost without limiting the resource options the utility can consider. See § 69-8-102.

2001 statutes – post rejection of HB 474

69-8-210. Public utilities -- electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(4) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

History: En. Sec. 11, Ch. 505, L. 1997; amd. Sec. 12, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002).

Compiler's Comments

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

2003 statutory language

69-8-210. Public utilities -- electricity supply. (1) A public utility's distribution services provider shall provide default supply service.

(2) The commission shall establish an electricity cost recovery mechanism that allows a default supplier to fully recover prudently incurred electricity supply costs, subject to the provisions of 69-8-419 and 69-8-420. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(3) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201.

(4) Notwithstanding any service options that the commission may require pursuant to subsection (3), a default supplier shall offer its customers the option of purchasing a product composed of or supporting power from certified environmentally preferred resources that include but are not limited to wind, solar, geothermal, and biomass, subject to review and approval by the commission. The commission shall ensure that these resources have been certified as meeting industry-accepted standards.

(5) (a) Subject to subsection (5)(b), the commission shall, in reviewing the procurement of electricity supply by the default supplier, take into account the statewide economic benefits that are associated with the electricity supply procurement for the default supply stakeholders. The default supply stakeholders include the default supplier, customers of the default supplier, and the public.

(b) The consideration of economic benefits is secondary to the consideration of the costs and benefits to the consumer and other criteria established by law.

(6) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

History: En. Sec. 11, Ch. 505, L. 1997; amd. Sec. 12, Ch. 577, L. 2001 (voided by I.R. No. 117, Nov. 5, 2002); amd. Sec. 5, Ch. 509, L. 2003; amd. Sec. 1, Ch. 600, L. 2003.